

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

LA UNIÓN DEL PUEBLO ENTERO, et al.,

Plaintiffs,

v.

5:21-cv-844-XR

GREGORY W. ABBOTT, et al.,

Defendants.

OCA-GREATER HOUSTON, et al.,

Plaintiffs,

v.

1:21-cv-0780-XR

JANE NELSON, et al.,

Defendants.

**OCA, HAUL, AND LULAC PLAINTIFFS’ PARTIALLY UNOPPOSED
MOTION TO SUBSTITUTE DEFENDANT HARRIS COUNTY ELECTIONS
ADMINISTRATOR FOR HARRIS COUNTY CLERK**

Pursuant to Federal Rule of Civil Procedure 25(d), OCA Plaintiffs,¹ HAUL Plaintiffs,² and LULAC Plaintiffs³ (collectively, “Plaintiffs”) respectfully move the Court to substitute Harris County Clerk Teneshia Hudspeth in her official capacity as a Defendant in place of Harris County Elections Administrator Clifford Tatum, also sued in his official capacity. The Harris County Clerk, State Defendants, GOP Intervenor-Defendants, Travis County Defendants, Bexar County

¹ Plaintiffs OCA-Greater Houston (OCA-GH), League of Women Voters of Texas (LWVTX), and REVUP-Texas (REVUP).

² Plaintiffs Houston Area Urban League, Delta Sigma Theta Sorority, Inc., The Arc of Texas, and Jeffrey Lamar Clemmons.

³ Plaintiffs LULAC Texas (“LULAC”), Texas Alliance for Retired Americans (“TARA”), Texas AFT (“AFT”), and Voto Latino.

Defendants, Dallas County Defendants, and El Paso County Elections Administrator do not oppose this motion. The remaining Defendants did not indicate a position prior to the filing of this motion.

Federal Rule of Civil Procedure 25(d) directs that when a “public officer who is a party in an official capacity . . . ceases to hold office while the action is pending[, t]he officer’s successor is automatically substituted as a party.” Fed. R. Civ. P. 25(d). “The rule applies not only when A is substituted for B in a particular office but also when a particular function is transferred from one office to another office.” 7C Fed. Prac. & Proc. Civ. § 1960 & n.6 (3d ed.) (collecting authority). Accordingly, courts routinely apply Rule 25(d) to substitute defendants when the authority to carry out a relevant duty transfers to another office or agency. *See, e.g., Lezzar v. Heathman*, No. 4:11-CV-4168, 2012 WL 4867696, at *10 (S.D. Tex. Oct. 11, 2012) (substituting defendant pursuant to Rule 25(d) following “transfer of authority to adjudicate applications for naturalization from the Attorney General of the United States to the Secretary of Homeland Security”); *Ogburn v. Callahan*, 992 F. Supp. 882, 891 (E.D. Tex. 1997) (substituting defendant pursuant to Rule 25(d) where “the function of the Secretary of Health and Human Services in Social Security cases was transferred to the Commissioner of Social Security”); *Top Flight Ent., Ltd. v. Schuette*, 729 F.3d 623, 630 n.1 (6th Cir. 2013) (collecting authority); *Lee v. Callahan*, 116 F.3d 484, 1997 WL 334999 (9th Cir. 1997).

Plaintiffs each bring claims against the Harris County Elections Administrator in his official capacity because he was, at the time this litigation began, responsible for enforcing numerous provisions enacted by S.B. 1.⁴ On September 1, 2023, pursuant to a change under state law, Harris County abolished the office of its Elections Administrator and transferred “all powers

⁴ OCA Plaintiffs’ 2d Am. Compl., ECF No. 200 at 21; LULAC Plaintiffs’ 2d. Am. Compl., ECF No. 207 at 12; HAUL Plaintiffs’ 2d. Am. Compl., ECF. No. 199 at 35. When Harris County Elections Administrator Cliff Tatum assumed office, he was substituted for his predecessor, Isabel Longoria, as a defendant in this action pursuant to Rule 25(d). *See, e.g.,* ECF No. 541.

and duties” of the office to the Harris County Clerk and County Tax-Assessor.⁵ The Elections Administrator’s voter registration duties were transferred to the County Tax-Assessor and are not implicated by Plaintiffs’ claims.⁶ The Elections Administrator’s remaining duties, including those relevant to Plaintiffs’ claims challenging S.B. 1, were transferred to the office of the Harris County Clerk.⁷ Accordingly, “by force of law” under Rule 25(d), *Air Line Pilots Ass’n, Int’l v. C.A.B.*, 750 F.2d 81, 87 (D.C. Cir. 1984), County Clerk Teneshia Hudspeth should be “automatically substituted as a party” in this matter, Fed. R. Civ. P. 25(d).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully move for the Court to substitute Harris County Clerk Teneshia Hudspeth in her official capacity as a Defendant in place of Harris County Elections Administrator Clifford Tatum.

Dated: September 6, 2023

Respectfully submitted,

/s/ Zachary Dolling

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⁵ 88th Leg. R.S., S.B. 1750, (to be codified as an amendment to Tex. Elec. Code § 31.050).

⁶ *Id.* (“The county tax assessor-collector shall serve as the voter registrar . . .”).

⁷ *Id.* (“[T]he duties and functions of the county clerk that were performed by the administrator revert to the county clerk.”); Faith Bugenhagen, *Harris County Commissioners Divvy Up the Duties of the Abolished Election Administrator’s Office*, HOUS. PRESS (Aug. 30, 2023), <https://www.houstonpress.com/news/commissioners-reshuffle-the-duties-of-discontinued-elections-administrators-office-16375070> (“[County Clerk] Hudspeth will oversee election management, while [County Tax Assessor] Bennett will handle voter registration. They will officially take over operations on Friday [September 1].”).

object.or

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CERTIFICATE OF SERVICE

On September 6, 2023, I filed the foregoing using the CM/ECF system of the Western District of Texas, which will send notification of this filing to counsel of record.

/s/ Zachary Dolling

CERTIFICATE OF CONFERENCE

I certify that on September 5, 2023, I conferred via e-mail with counsel for Defendants. The Harris County Clerk, State Defendants, GOP Intervenor-Defendants, Travis County Defendants, Bexar County Defendants, Dallas County Defendants, and El Paso Elections Administrator do not oppose this motion. The remaining Defendants did not indicate a position prior to the filing of this motion.

/s/ Zachary Dolling